

to gather and review information from Dr. Berwick.

(3) The Senate Finance Committee review process for the Berwick nomination was proceeding normally. A hearing on the nomination of Dr. Berwick had been requested and no objections had been raised to having the hearing.

(4) On July 7, 2010, less than 3 months after the nomination and without a Senate Finance Committee hearing taking place, the President recess-appointed Dr. Berwick to serve as the Administrator of CMS. Dr. Berwick was sworn in on July 12, 2010.

(5) The appointment of the Administrator of CMS is subject to Senate confirmation under article II, section 2, clause 2 of the Constitution. Dr. Berwick's nomination was referred to the Senate Finance Committee which has jurisdiction over health programs under the Social Security Act and the responsibility to examine Presidential nominees related to these programs.

(6) It is especially true that Dr. Berwick's nomination should have undergone the Senate Finance Committee nomination review process in light of the significant responsibilities of the Administrator of CMS.

(7) CMS is responsible for the health care of more than 100,000,000 Americans, and is one of the largest agencies in the Federal Government.

(8) The recently enacted Patient Protection and Affordable Care Act (commonly referred to as the "health care reform law") significantly increases the responsibilities of CMS, including half a trillion dollars in Medicare provider cuts and the largest expansion of the Medicaid program since its inception.

(9) The manner in which an individual nominated to serve as the Administrator of CMS intends to carry out these responsibilities is a serious matter and warrants a thorough review. A thorough review is especially needed for Dr. Berwick's appointment in light of statements he has made in the past about health care rationing as well as the role of government in health care.

(10) By recess-appointing Dr. Berwick, the President has attempted to short circuit the requirement of article II, section 2, clause 2 of the Constitution that he appoint officers of the United States "by and with the Advice and Consent of the Senate".

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the recess appointment of Dr. Donald Berwick, while consideration of his nomination to serve as Administrator of CMS was proceeding normally through the Senate Finance Committee nomination review process, constitutes an abuse of power by the President; and

(2) notwithstanding his recess appointment to that position, Dr. Donald Berwick should appear before the Senate Finance Committee and respond to questions by members about his qualifications to serve as Administrator of CMS.

**SA 4513.** Mr. JOHANNIS submitted an amendment intended to be proposed to amendment SA 4500 proposed by Mr. REID (for Mr. LEMIEUX (for himself, Ms. LANDRIEU, Mr. MERKLEY, Mrs. BOXER, Ms. CANTWELL, Ms. KLOBUCHAR, and Mrs. MURRAY)) to the amendment SA 4499 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue

Code of 1986 to provide tax incentives for small business job creation, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

#### **PART IV—ADDITIONAL PROVISIONS**

##### **SEC. \_\_\_\_\_. REPEAL OF EXPANSION OF INFORMATION REPORTING REQUIREMENTS.**

Section 9006 of the Patient Protection and Affordable Care Act, and the amendments made thereby, are hereby repealed; and the Internal Revenue Code of 1986 shall be applied as if such section, and amendments, had never been enacted.

##### **SEC. \_\_\_\_\_. EXPANSION OF AFFORDABILITY EXCEPTION TO INDIVIDUAL MANDATE.**

Section 5000A(e)(1)(A) of the Internal Revenue Code of 1986 is amended by striking "8 percent" and inserting "5 percent".

##### **SEC. \_\_\_\_\_. USE OF PREVENTION AND PUBLIC HEALTH FUND.**

(a) USE OF FUNDS AS OFFSET THROUGH FISCAL YEAR 2017.—Section 4002(b) of the Patient Protection and Affordable Care Act is amended by striking "appropriated—" and all that follows and inserting "appropriated, for fiscal year 2018, and each fiscal year thereafter, \$2,000,000,000".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the enactment of section 4002 of the Patient Protection and Affordable Care Act.

##### **SEC. \_\_\_\_\_. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.**

The percentage under paragraph (2) of section 561 of the Hiring Incentives to Restore Employment Act in effect on the date of the enactment of this Act is increased by 4.25 percentage points.

#### **AUTHORITY FOR COMMITTEES TO MEET**

##### **COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION**

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on July 22, 2010, in room 253 of the Russell Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### **COMMITTEE ON ENERGY AND NATURAL RESOURCES**

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on July 22, 2010, at 11 a.m., in room SD-366 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### **COMMITTEE ON FOREIGN RELATIONS**

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on July 22, 2010, at 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### **COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS**

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet

during the session of the Senate, to conduct a hearing entitled "Workplace Safety and Worker Protections at BP" on July 22, 2010. The hearing will commence at 10 a.m. in room 430 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### **COMMITTEE ON INDIAN AFFAIRS**

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet during the session of the Senate on July 22, 2010, at 10:30 a.m. in room 628 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### **AD HOC SUBCOMMITTEE ON STATE, LOCAL, AND PRIVATE SECTOR PREPAREDNESS AND INTEGRATION**

Mr. HARKIN. Mr. President, I ask unanimous consent that the Ad Hoc Subcommittee on State, Local, and Private Sector Preparedness and Integration of the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on July 22, 2010, at 10 a.m. to conduct a hearing entitled, "A Review of Disaster Medical Preparedness: Improving Coordination and Collaboration in the Delivery of Medical Assistance during Disasters."

The PRESIDING OFFICER. Without objection, it is so ordered.

##### **SUBCOMMITTEE ON CLEAN AIR AND NUCLEAR SAFETY**

Mr. HARKIN. Mr. President, I ask unanimous consent that the Subcommittee on Clean Air and Nuclear Safety of the Committee on Environment and Public Works be authorized to meet during the session of the Senate on July 22, 2010, at 9:15 a.m. in room 406 of the Dirksen Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### **SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, FEDERAL SERVICES, AND INTERNATIONAL SECURITY**

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs' Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security be authorized to meet during the session of the Senate on July 22, 2010, at 2:30 p.m. to conduct a hearing entitled, "The Gulf of Mexico Oil Spill: Ensuring a Financially Responsible Recovery Part II."

The PRESIDING OFFICER. Without objection, it is so ordered.

#### **PRIVILEGES OF THE FLOOR**

Mr. HARKIN. Mr. President, I ask unanimous consent that Katie Meehan, Johanna Lucas, Abby Richardson, Kevin O'Brien, and Stephanie Rapp of my staff be granted floor privileges for the rest of today's session.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.